

MINTZ LEVIN
COHN FERRIS
GLOVSKY AND
POPEO PC

Washington
Boston
New York
Reston
New Haven

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202 434 7300
202 434 7400 fax
www.mintz.com

Michael H. Pryor
Counsel

Direct dial 202 434 7365
mhpryor@mintz.com

February 3, 2003

REDACTED CONFIDENTIAL FILING – REDACTED FOR PUBLIC INSPECTION
Via Electronic Comment Filing System

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Ex Parte Presentation*, CC Docket Nos. 01-338 and 96-98

Dear Ms. Dortch:

NewSouth Communications (“NewSouth”), through its counsel, hereby submits this notice of three *ex parte* meetings. At the first meeting, on January 30, 2003, Jake E. Jennings, Vice President, Regulatory Affairs, NewSouth, and the undersigned, met with Lisa Zaina, Senior Legal Advisor to Commissioner Jonathan S. Adelstein. At the second meeting, on January 31, 2003, Jake E. Jennings, Vice President, Regulatory Affairs, NewSouth, and the undersigned, met separately with Matthew Brill, Senior Legal Advisor to Commissioner Kathleen Q. Abernathy and with Commissioner Kevin J. Martin, and Emily Willeford, Special Assistant for Legislative and Public Affairs for Commissioner Kevin J. Martin.

The purpose of these meetings was to discuss the need for conducting a route by route analysis to determine impairment for dedicated transport, consistent with the attached presentation. In the meetings with Matthew Brill and Commissioner Kevin J. Martin, we also discussed the proposal submitted by Allegiance Telecom in its January 31, 2003 *ex parte* filing in the above-referenced dockets, proposing a test to determine impairment on a route-by-route basis. NewSouth expressed its general support of the Allegiance proposal and emphasized the importance of ensuring that alternative transport providers actually make available transport at the requested capacity level.

Marlene H. Dortch, Secretary

February 3, 2003

Page 2

Pursuant to Section 1.1206(b)(2) of the Commission's rules, this letter is being provided for inclusion in the public record of the above-referenced proceeding. One copy of the attached material containing confidential business information will be filed with the Secretary, via hand delivery, and one copy of the redacted version of the attachment will be filed on the Electronic Comment Filing System.

Very truly yours,

/s/ Michael H. Pryor

Michael H. Pryor

Counsel to NewSouth Communications

Enclosure

cc: Lisa Zaina (w/out attachment)
Daniel Gonzalez (w/ attachment)
Matthew Brill (w/out attachment)
Brent Olson (w/ attachment)
Jeremy Miller (w/ attachment)
William Maher (w/ attachment)
Jake E. Jennings (w/ attachment)



Triennial Review
Ex Parte Presentation

REDACTED CONFIDENTIAL FILING – REDACTED FOR PUBLIC INSPECTION

Contestable Market Approaches for Dedicated Transport Are Unrealistic.

- Transport services are point-to-point services. The fact that carriers have found it economically viable to provide service on one route provides no evidence of the viability of providing service on another route. Even the Bell Companies acknowledge this fact:

“[Special access facilities are ‘point-to-point, not switched, and a ubiquitous network is not necessary to participate successfully as a competitive supplier’ of dedicated circuits. Rather, such facilities are efficiently deployed (whether by a CLEC or an ILEC) where there is sufficient traffic between the relevant points. Consequently, the fact that an ILEC has deployed facilities on another point-to-point route has no bearing on whether deployment *is viable* on the route in question.” Opposition of SBC Communications to AT&T Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Special Access Services, RM 10593, at 36 (filed Dec. 2, 2002) (emphasis added).
- In many areas there is extremely limited competitive entry for interoffice transport, as demonstrated by evidence submitted in pricing flexibility proceedings. In the BellSouth territory, where NewSouth operates, BellSouth has sought and obtained pricing flexibility based on extremely limited competitive showings.

Table 1
Extent of Competitive Entry in BellSouth MSAs

MSA	Total BellSouth WCs	WCs w/ Collocators	Collocators With Non- BellSouth Entrance Facilities in the MSA	No. of B.S. WCs w/4 or more Collocators^{1/}
Evansville	4	1	1	0
Lexington	7	1	1	0
Kentucky Outside MSAs	130	3	3	0
Owensboro	9	1	1	0
Clarksville	12	2	2	0
N. Carolina Outside MSAs	57	5	8	1

^{1/} NewSouth concurs in the view that dedicated transport should not be unbundled in any wire center that does not have at least four alternative carriers capable of providing service from that wire center to the required destination). *See, e.g.*, Allegiance Reply Comments at 18-24 (explaining that the presence of at least four non-ILEC providers substantially lessens the threat of anticompetitive conduct); WorldCom Reply Comments at 126-27 (same).

Even in Major Urban MSAs, Competitive Entry by Carriers with their Own Transport Is Concentrated.

Table 2
Extent of Competitive Entry in Major Urban BellSouth MSAs

MSA	Total BellSouth WCs	WCs w/ Collocators	Collocators With Non-BellSouth Entrance Facilities in the MSA	Number of B.S. WCs w/4 or more Collocators
Atlanta, GA	58	16	69	9
Charlotte, NC	22	12	46	5
Greensboro, NC	17	7	20	3
Nashville, TN	41	16	33	1
New Orleans, LA	28	6	14	1
Orlando, FL	10	7	39	6

Competitive Carriers Serve Customers Subtending Many Wire Centers, Not Just Those Generating the Most Special Access Revenue.

- The BOCs contend that the lack of collocators in the majority of wire centers is not important because CLECs concentrate in the wire centers with the most special access revenues.
- As demonstrated in the following tables, this is simply not the case, at least not for NewSouth. NewSouth serves customers subtending a large number of wire centers in an MSA.
- The vast majority of these wire centers have no alternative transport providers, based on the evidence submitted in BellSouth's pricing flexibility petitions.

Table 3
Greenville, South Carolina MSA

MSA	Wire Center (WC) CLLI	WC Name	Collocators with Non BellSouth Entrance Facilities (EF)	NewSouth Leased DS-1 Loops*
			No.	
Greenville-Spartanburg, SC	SPBGSCMA	SPBG MAIN	2	Yes
Greenville-Spartanburg, SC	GNVLSCDT	GREENVILLE D&T	1	Yes
Greenville-Spartanburg, SC	GNVLSCWR	GNVL WOODRUFF RD	1	Yes
Greenville-Spartanburg, SC	LYMNSCES	LYMAN MAIN	1	Yes
Greenville-Spartanburg, SC	SPBGSCWV	SPBG WESTVIEW	1	Yes
Greenville-Spartanburg, SC	BLRGSCMA	BLUE RIDGE MAIN	0	Yes
Greenville-Spartanburg, SC	CENTSCWS	CENTRAL MAIN	0	Yes
Greenville-Spartanburg, SC	CLNSNCMA	CLEMSON MAIN	0	Yes
Greenville-Spartanburg, SC	ESLYSCMA	EASLEY MAIN	0	Yes
Greenville-Spartanburg, SC	FNVLSCMA	SPBG FINGERVILLE	0	No
Greenville-Spartanburg, SC	GNVLSCBE	GNVL BERE A	0	Yes
Greenville-Spartanburg, SC	GNVLSCCH	GNVL CHURCHILL	0	Yes
Greenville-Spartanburg, SC	GNVLSCCR	GNVL CRESTWOOD	0	Yes
Greenville-Spartanburg, SC	GNVLSCWE	GNVL WEST	0	Yes
Greenville-Spartanburg, SC	GNVLSCWP	GNVL WARE PLACE	0	Yes
Greenville-Spartanburg, SC	GRERSCMA	GREER MAIN	0	Yes
Greenville-Spartanburg, SC	LBRTSCMA	LIBERTY MAIN	0	Yes
Greenville-Spartanburg, SC	LYMNSCIP	LYMAN IND PARK	0	Yes
Greenville-Spartanburg, SC	MRTTSCMA	TRRS SLATER MARIETTA	0	Yes
Greenville-Spartanburg, SC	PCKNSCES	PICKENS MAIN	0	Yes
Greenville-Spartanburg, SC	SPBGSCBS	SPBG BOILING SPRINGS	0	Yes
Greenville-Spartanburg, SC	SPBGSCCV	SPBG CONVERSE	0	Yes
Greenville-Spartanburg, SC	SXMLSCMA	SIX MILE MAIN	0	No
Greenville-Spartanburg, SC	TRRSSCMA	TRAVELERS REST MAIN	0	Yes

* NewSouth is collocated in two of the wire centers

Table 4
Atlanta MSA

MSA	Wire Center (WC) CLLI	WC Name	Collocators with Non BellSouth Entrance Facilities (EF)	NewSouth DS-1 Loops*
			No.	
Atlanta, GA	ATLNGACS	COURTLAND ST	8	Yes
Atlanta, GA	SMYRGAPF	POWERS FERRY	8	Yes
Atlanta, GA	ATLNGABU	BUCKHEAD	7	Yes
Atlanta, GA	DNWDGAMA	DUNWOODY	7	Yes
Atlanta, GA	NRCRGAMA	NORCROSS	7	Yes
Atlanta, GA	ALPRGAMA	ALPHARETTA MAIN	6	Yes
Atlanta, GA	ATLNGAPP	PEACHTREE PLACE	5	Yes
Atlanta, GA	RSWLGAMA	ROSWELL MAIN	5	Yes
Atlanta, GA	MRTTGAMA	MARIETTA MAIN	4	Yes
Atlanta, GA	ATLNGAEP	EAST POINT	2	Yes
Atlanta, GA	ATLNGASS	SANDY SPRINGS	2	Yes
Atlanta, GA	SMYRGAMA	SMYRNA	2	Yes
Atlanta, GA	ATLNGATH	TOCO HILLS	2	Yes
Atlanta, GA	TUKRGAMA	TUCKER	2	Yes
Atlanta, GA	DLTHGAHS	DULUTH ESS	1	Yes
Atlanta, GA	LLBNGAMA	LILBURN	1	Yes
Atlanta, GA	ACWOGAMA	ACWORTH MAIN	0	Yes
Atlanta, GA	ATLNGAAD	ADAMSVILLE	0	Yes
Atlanta, GA	ASTLGAMA	AUSTELL	0	Yes
Atlanta, GA	ATLNGABH	BEN HILL	0	Yes
Atlanta, GA	BUFRGABH	BUFORD ESS	0	No
Atlanta, GA	CHMBGAMA	CHAMBLEE MAIN	0	Yes
Atlanta, GA	ATLNGACD	COLUMBIA DRIVE	0	Yes
Atlanta, GA	CNYRGAMA	CONYERS MAIN	0	No
Atlanta, GA	CVTNGAMT	COVINGTON MAIN	0	No
Atlanta, GA	CMNGGAMA	CUMMING MAIN	0	No
Atlanta, GA	DLLSGAES	DALLAS ESS	0	Yes
Atlanta, GA	DGVLGAMA	DOUGLASVILLE MAIN	0	Yes
Atlanta, GA	ATLNGAEL	EAST LAKE	0	Yes
Atlanta, GA	FRBNGAEB	FAIRBURN ESS	0	Yes
Atlanta, GA	FYVLGASG	FAYETTEVILLE ESS	0	Yes
Atlanta, GA	ATLNGAFP	FOREST PARK	0	Yes
Atlanta, GA	ATLNGAGR	GRESHAM	0	Yes
Atlanta, GA	HMPNGAJW	HAMPTON ESS	0	Yes
Atlanta, GA	ATLNGAHR	HOLLYWOOD RD	0	Yes
Atlanta, GA	ATLNGAIC	INDIAN CREEK	0	Yes
Atlanta, GA	JCSNGAMA	JACKSON MAIN	0	No
Atlanta, GA	JNBOGAMA	JONESBORO	0	Yes
Atlanta, GA	KGTNGAMA	KINGSTON	0	No

Table 4 (cont'd)
Atlanta MSA

MSA	Wire Center (WC) CLLI	WC Name	Collocators with Non BellSouth Entrance Facilities (EF)	NewSouth DS-1 Loops*
			No.	
Atlanta, GA	ATLNGALA	LAKEWOOD	0	Yes
Atlanta, GA	LTHNGAJS	LITHONIA ESS	0	Yes
Atlanta, GA	LGVLGACS	LOGANVILLE ESS	0	Yes
Atlanta, GA	MRTTGAEA	MARIETTA EAST	0	Yes
Atlanta, GA	MCDNGAGS	MCDONOUGH DMS	0	Yes
Atlanta, GA	MRRWGAMA	MORROW	0	Yes
Atlanta, GA	LRVLGAOS	OAK STREET	0	Yes
Atlanta, GA	PLMTGAMA	PALMETTO ESS	0	Yes
Atlanta, GA	PANLGAMA	PANOLA RD	0	Yes
Atlanta, GA	PTCYGAMA	PEACHTREE CITY	0	Yes
Atlanta, GA	PWSPGAAS	POWDER SPRINGS ESS	0	Yes
Atlanta, GA	RVDLGAMA	RIVERDALE	0	Yes
Atlanta, GA	SNLVGAMA	SNELLVILLE MAIN	0	Yes
Atlanta, GA	SCCRGAMA	SOCIAL CIRCLE MAIN	0	No
Atlanta, GA	STBRGANH	STOCKBRIDGE ESS	0	Yes
Atlanta, GA	SNMTGALR	STONE MOUNTAIN	0	Yes
Atlanta, GA	VLRCGAES	VILLA RICA MAIN	0	No
Atlanta, GA	ATLNGAWE	WEST END	0	Yes
Atlanta, GA	ATLNGAWD	WOODLAND	0	Yes
Atlanta, GA	WDSTGACR	WOODSTOCK ESS	0	Yes

* NewSouth is collocated in five of the wire centers.

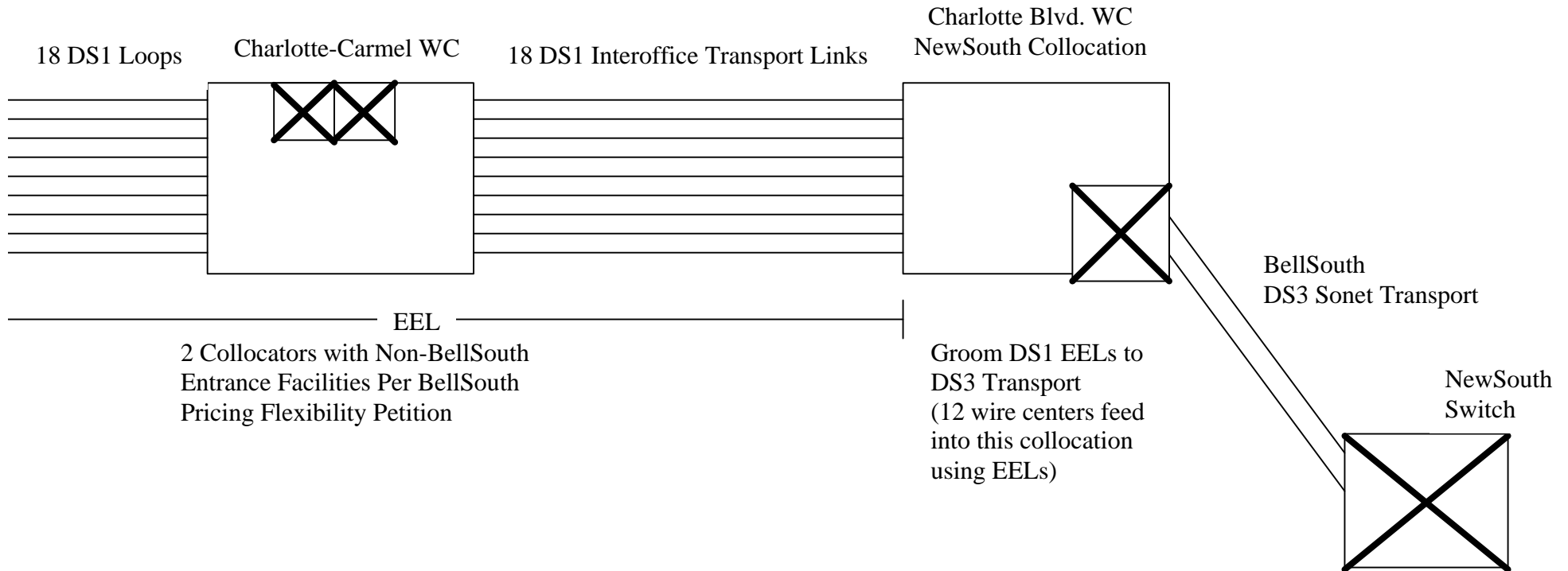
Table 5
Charlotte MSA

MSA	Wire Center (WC) CLLI	WC Name	Collocators with Non BellSouth Entrance Facilities (EF)	NewSouth DS-1 Loops*	Number of Loops
			No.		
Charlotte-Gastonia, NC	CHRLNCCA	CHARLOTTE-CALDWELL	10	Yes	REDACTED FOR PUBLIC INSPECTION
Charlotte-Gastonia, NC	CHRLNCBO	CHARLOTTE-S BLVD	9	Yes	
Charlotte-Gastonia, NC	CHRLNCUN	CHARLOTTE-UNIVERSITY	7	Yes	
Charlotte-Gastonia, NC	CHRLNCSH	CHRL-SHARON AMITY	6	Yes	
Charlotte-Gastonia, NC	CHRLNCRE	CHARLOTTE-REID	5	Yes	
Charlotte-Gastonia, NC	CHRLNCCR	CHARLOTTE-CARMEL	2	Yes	
Charlotte-Gastonia, NC	CHRLNCLP	CHARLOTTE-LAKE POINT	2	Yes	
Charlotte-Gastonia, NC	CHRLNCDE	CHARLOTTE-DERITA	1	Yes	
Charlotte-Gastonia, NC	CHRLNCER	CHARLOTTE-ERWIN RD	1	Yes	
Charlotte-Gastonia, NC	CHRLNCCE	CHRL-CENTRAL AVE	1	Yes	
Charlotte-Gastonia, NC	CHRLNCTH	CHRL-THOMASBORO	1	Yes	
Charlotte-Gastonia, NC	GSTANCSO	GASTONIA-SOUTH ST	1	Yes	
Charlotte-Gastonia, NC	BLMTNCCE	BELMONT-CENTRAL	0	No	
Charlotte-Gastonia, NC	BSCYNCMA	BESSEMER-MAIN	0	No	
Charlotte-Gastonia, NC	CHRLNCMI	CHARLOTTE-MINT HILL	0	No**	
Charlotte-Gastonia, NC	CHRLNCOD	CHARLOTTE-OLD DOWD	0	No**	
Charlotte-Gastonia, NC	DVSNNCPO	DAVIDSON-POTTS	0	Yes	
Charlotte-Gastonia, NC	GSTANCDA	GASTONIA-DALLAS	0	Yes	
Charlotte-Gastonia, NC	HSVLCCE	HUNTERSVILLE-CENTRAL	0	Yes	
Charlotte-Gastonia, NC	LWLLNCMA	LOWELL-MAIN	0	No	
Charlotte-Gastonia, NC	MTHLNCMA	MOUNT HOLLY-MAIN	0	No	
Charlotte-Gastonia, NC	STNLNCCE	STANLEY-CENTRAL	0	No	

* NewSouth is collocated in three of the wire centers.

** Corrected from Jan. 14, 2003 submission.

Route-by-Route Analysis Is Required to Assess Existence of Realistic Alternatives.



1. Transport alternatives between Charlotte-Carmel and Charlotte Blvd. are not available, despite existence of fiber-based collocators.
 - Transport must be on the required route.
 - Provider must have capacity to sell.
2. Eliminating interoffice transport as UNEs where no transport is realistically available will force NewSouth to either abandon its customers or purchase special access, which will double NewSouth's costs.
3. Use of special access for interoffice transport requires elimination of co-mingling restrictions.

Special Access – EEL Comparison

LATA 420 Asheville, NC		Density Zone 2			
Element	EEL USOCs	EEL Rate	SPA USOCs	SPA 2yr. Rate	SPA 5yr. Rate
Channel Term (DS1 Loop)	USLXX	\$ 84.36	TMECS	\$ 126.00	\$ 123.00
Mileage @ 10 miles	1L5XX	\$ 5.80	1L5XX	\$ 135.00	\$ 105.00
InterOffice Channel Fixed	U1TF1	\$ 71.29	1L5XX	\$ 75.00	\$ 70.00
COLO Cross Connects	PE1PG, PE1P1	\$ 3.13			
Ring Cross Connect on Muxed DS3	1PQE1		1PQE1	\$ 12.00	\$ 12.00
Total:		\$ 164.58		\$ 348.00	\$ 310.00
28 DS1 Multiplexing	MQ3	\$ 226.81	MQ3CO	\$ 490.00	\$ 450.00
24 DS0 Multiplexing	MQ1	\$ 177.72	MQ1	\$ 171.00	\$ 167.00
LATA 474 Knoxville, TN		Density Zone 2			
Element	EEL USOCs	EEL Rate	SPA USOCs	SPA 2yr. Rate	SPA 5yr. Rate
Channel Term (DS1 Loop)	USLXX	\$ 75.40	TMECS	\$ 126.00	\$ 123.00
Mileage @ 10 miles	1L5XX	\$ 3.60	1L5XX	\$ 135.00	\$ 105.00
InterOffice Channel Fixed	U1TF1	\$ 77.86	1L5XX	\$ 75.00	\$ 70.00
COLO Cross Connects	PE1PG, PE1P1	\$ 2.71			
Ring Cross Connect on Muxed DS3	1PQE1		1PQE1	\$ 12.00	\$ 12.00
Total:		\$ 159.57		\$ 348.00	\$ 310.00
28 DS1 Multiplexing	MQ3	\$ 222.98	MQ3CO	\$ 490.00	\$ 450.00
24 DS0 Multiplexing	MQ1	\$ 165.21	MQ1	\$ 171.00	\$ 167.00
LATA 440 Savannah, GA		Density Zone 2			
Element	EEL USOCs	EEL Rate	SPA USOCs	SPA 2yr. Rate	SPA 5yr. Rate
Channel Term (DS1 Loop)	USLXX	\$ 64.13	TMECS	\$ 126.00	\$ 123.00
Mileage @ 10 miles	1L5XX	\$ 4.50	1L5XX	\$ 135.00	\$ 105.00
InterOffice Channel Fixed	U1TF1	\$ 78.47	1L5XX	\$ 75.00	\$ 70.00
COLO Cross Connects	PE1PG, PE1P1	\$ 2.33			
Ring Cross Connect on Muxed DS3	1PQE1		1PQE1	\$ 12.00	\$ 12.00
Total:		\$ 149.43		\$ 348.00	\$ 310.00
28 DS1 Multiplexing	MQ3	\$ 182.04	MQ3CO	\$ 490.00	\$ 450.00
24 DS0 Multiplexing	MQ1	\$ 126.22	MQ1	\$ 171.00	\$ 167.00

The Commission Should Remove “Use Restrictions” and Rely on Its Impairment Findings

- NewSouth has urged the Commission to foster facilities-based competition by removing obstacles to loop access and use. Usage restrictions, and the concomitant tests and audit requirements, impose unnecessary costs and delay.
- The Commission imposed interim restrictions on EEL conversions pending the development of a record to determine if carriers were impaired without loop/transport combinations when providing “special access service.”
- A sufficient record is now before the Commission to make the requisite determinations.
- Impairment determinations made on a granular basis obviate the need for usage restrictions, and the complicated, burdensome tests and audits used to assess compliance. Imposing usage restrictions where there has been no finding of lack of impairment would be unlawful.
- Usage restrictions should NOT be used to enforce impairment determinations. If an ILEC believes a carrier is obtaining UNEs in circumstances where the Commission has found no impairment, the ILECs’ recourse is to file an enforcement action.